

ANDREAS HERPENS ET AL.  
USSN 09/891,929

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

The previous claims have been replaced by a new set of claims. For the Examiner's information, the previous claims correspond to the previous claims as follows:

<u>New Claim</u>	<u>Previous Claim</u>
18	8 + 12 (aluminum chlorohydrate)
27	8 + 12 (aluminum hydroxylactates)
36	8 + 12 (acidic aluminum/zirconium salts)
19, 28, 37	9
20, 29, 38	10
21, 30, 39	11
22, 31, 40	13
23, 32, 41	14
24, 33, 42	15
25, 34, 43	16

ANDREAS HERPENS ET AL.  
USSN-09/891,929

26, 35, 44

17

Applicants submit that the new claims do not introduce new matter.

Claims 8, 9 and 12-17 were rejected under 35 USC § 102(b) as being anticipated by Sellers, Jr. ("Sellers"), U.S. Patent No. 5,667,790. In response, Applicants would remind the Examiner that anticipation requires that each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference, and, further, if the Examiner relies on a theory of inherency as to any particular element, then the extrinsic evidence must make clear that such element is *necessarily* present in the thing described in the reference, and the presence of such element therein would be so recognized by persons skilled in the art. *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Further, inherency is not established by probabilities or possibilities, and the mere fact that a property may result from a given circumstances is not sufficient; instead it must be shown that such property *necessarily* inheres in the thing described in the reference. *Id.* As the Examiner concedes, Sellers teaches aluminum chlorhydrate. From a consideration of the formula given in Sellers at column 2, line 61, and comparing that to the formula given in Hewitt et al., U.S. Patent No. 3,842,847, at column 2, lines 19-21, it appears that aluminum chlorhydrate ( $\text{AlCl}_3 \cdot 6\text{H}_2\text{O}$ ) is different from aluminum chlorhydrate [ $\text{Al}_2(\text{OH})_{6-n}\text{Cl}_n$ ]. Consequently, the Examiner has not made out a *prima facie* case that claims 18-26 are anticipated by Sellers.

With respect to claims 27-44, Applicants point out that these claims require aluminum

ANDREAS HERPENS ET AL.  
USSN 09/891,929

hydroxylactates or acidic aluminium/zirconium salts, which the Examiner has not shown are taught by Sellers. Consequently, these claims also are not anticipated by Sellers.

Claims 1-10 and 12-17 were rejected under 35 USC § 102(b) as being anticipated by Hewitt et al. ("Hewitt"), U.S. Patent No. 3,842,847. In response, Applicants point out that all of the instant claims require the composition comprising the antiperspirant active ingredient be topically administered "to an area affected by increased sebum production." While the Examiner takes the position that Hewitt teaches that the compositions therein diminish secretions of perspiration and sebum, the Examiner has not shown that these areas were affected by increased sebum production in the first place. Consequently, the Examiner has not made out a *prima facie* case of anticipation.

With respect to claims 27-44, Applicants point out that these claims require aluminum hydroxylactates or acidic aluminium/zirconium salts, which the Examiner has not shown are taught by Hewitt. Consequently, these claims also are not anticipated by Hewitt.

Claim 11 was rejected under 35 USC § 103(a) as being obvious over Hewitt in view of Jaeger et al. ("Jaeger"), DE 3015868. In response, Applicants point out that this rejection was dependent on Hewitt teaching the basic aspects of the present invention, which, Applicants have shown above, is not the case. Consequently, Applicants respectfully request that this rejection be reconsidered and withdrawn as well.

ANDREAS HERPENS ET AL.  
USSN 09/891,929

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

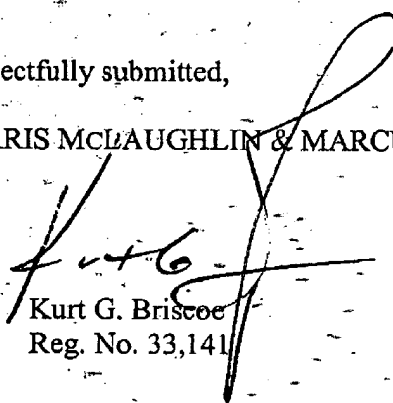
Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By

  
Kurt G. Briscoe  
Reg. No. 33,141

220 East 42<sup>nd</sup> Street  
30<sup>th</sup> Floor  
New York, New York 10017  
Phone: (212) 808-0700  
Fax: (212) 808-0844